

**WITHERED BURNS, LLP**

*Memorandum*

**To:** Council

**From:** City Attorney

**Date:** 5-28-14

**RE:** Changing to a Second Class City

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IC § 36-4-1-1 classifies cities of 35,000 or more as second class cities. Subsection 1.1 of that chapter states that a third class city will remain a third class city even though it attains a population of 35,000 until the legislative body adopts an ordinance changing it to a second class city:

**IC 36-4-1-1.1**

(a) Except as provided in subsection (b), a third class city remains a third class city even though the city attains a population of at least thirty-five thousand (35,000) at a federal decennial census.

(b) The legislative body of a city to which subsection (a) applies may, by ordinance, adopt second class city status.

Under IC § 36-4-1-8, whenever a city changes classification, the city will be governed by the laws applicable to its new class status. However, the membership of its legislative body will remain unchanged until the expiration of their term, despite the change in classification.

At the municipal election preceding the expiration of those terms, the number of members of the legislative body required by the new class shall be elected. Additionally, the roles of other elected officials do not change until the expiration of their respective term (e.g. Clerk-Treasurer would remain that way until the next election when a City Clerk would be elected and the mayor would appoint a City Controller). Finally, IC § 36-4-1-9 states that just because you change classes, it does not affect any ordinance rule or regulations of the city and the validity of prior acts, contracts, and obligations will not change.

**Notable Changes Between Third Class and Second Class City Status**

**IC § 36-4-6-3 Division of Council Districts**

- Under this section, a legislative body shall adopt an ordinance to divide the city into six districts. Boundary requirements are detailed out in the statute.
  - Legislative body will be composed of six members elected from the districts established plus three at large members.
  - Each voter in the city can vote for three candidates for at-large and one candidate from the district in which the voter resides. The three at-large candidates receiving the most votes from the whole city and the district candidates receiving most votes from their respective districts are elected to the council.

### **IC § 36-4-6-8 President, Vice President of Council**

- For a third class city, the mayor presides at all meetings and votes to break ties. There is also a president pro-tem to preside whenever the mayor is absent.
- However, in a second class city, the council must choose from its members a president who will preside over council business and a vice president.

### **IC § 36-4-9-6 Appointment of Officers**

- The mayor of a second class city shall appoint:
  - A city controller
  - A city civil engineer
  - A corporation council (same as our current city attorney)
  - Chief of the fire department
  - Police chief
  - Other officers, employees, boards, and commissions required by statute.
- This is in addition to all the normal department heads that cities are required to install.

### **IC 36-10-3 Parks Department in Second Class Cities**

- No change to current operations.

### **IC § 36-4-10-2 City Clerk and Controller**

- A **city clerk** is elected by the voters of each second class city, just as the clerk-treasurer is elected by voters in a third class city.
  - The term for a city clerk in a second class city is four years beginning at noon, January 1 after election and continuing until the successor is elected and qualified.
- The **city controller** is appointed under IC § 36-4-9-6. The city controller becomes the fiscal officer of each second class city and the city clerk remains the clerk.
  - The city controller's duties are listed out in IC § 36-4-10-5.
- IC § 36-4-10-7 requires a third class clerk-treasurer to appoint deputies and employees needed for effective operation of the office. There is no such requirement for a second class clerk or second class controller.
  - However, under IC § 36-4-11-5, the legislative body may, by ordinance, authorize the controller to appoint a deputy.
  - Likewise IC § 36-4-11-4 states that the City Clerk may appoint the number of deputies and employees authorized by the legislative body to serve at the Clerk's pleasure.

**IC 3-13-8 Vacancies** – A vacancy in a city office (other than judge of a city court) that was last held by a person elected or selected as a candidate of a major political party of the state shall be filled by a caucus under IC 3-13-11.<sup>1</sup>

- In a third class city, the temporary vacancy is filled first by the deputy mayor (if there is one) and if not, then by the **president of the council**, until the caucus can appoint a replacement mayor
- In a second class city, the position is filled by deputy mayor, and if none, then by the **city controller** until the caucus appoints a replacement.

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<sup>1</sup> If the office was not held by a major political party (e.g. an independent), then there are special rules for filling the position found in IC 3-13-8.

## **Cemeteries**

- IC 23-14-66 provides a mechanism for citizens of a third-class city to petition the common council to investigate nearby (including outside city boundaries) cemeteries in need of additional maintenance and care. If the council agrees that the cemetery is in need of care, the council *shall* then levy an annual tax to provide additional reasonable care and maintenance.
- There is no such provision for a **second class city**.

## **Police/Fire Merit Law**

- IC 36-8-3.5 covers police and fire merit law and commissions, and the Code Chapter applies to “each municipality or township that has a full-time paid police or fire department.”
  - Should not result in any change to City’s current police/fire merit system.
- IC 36-8-3-14 allows the safety board to submit an ordinance to the legislative body for the creation of a police insurance fund or a firefighters' insurance fund. This provision is not available to a second-class city, but it is my understanding that WL has never drafted such an ordinance as a third-class city.

## **Playground Tax**

- IC 36-10-14-4 allows a School Board in a third class city to levy a tax not exceeding \$.0067 on each \$100 of assessed value inside the third class city to manage and pay for summertime playgrounds.
- “This chapter *applies only to a school corporation in a third class city* with a board of school trustees.”
- After the change to a class two city, the School Board will no longer be able to assess this tax on the citizens of WL.
  - According to Ross Sloat, Business Manager for WL School System this will be about \$68,000 in difference per year.

## **Boards and Commissions**

### **Board of Public Works and Safety – IC 36-4-9-6**

- Mayor is no longer a member.
- Will need to add a fifth member to existing BOW to replace Mayor

### **Department Heads – IC 36-4-9-6**

- City Controller appointed by mayor.

### **CDBG Advisory Board**

- No change.

### **WL Building Corporation**

- No change.

### **WL Equipment Leasing Corporation Board of Directors**

- No change.

**Economic Development Commission – IC 36-7-12-5**

- No change.

**Redevelopment Commission – IC 36-7-16-6.1 & IC 36-7-16-3**

- No change.

**WL Redevelopment Authority – IC 36-7-14.5-8**

- No change.

**WL Traffic Commission – WL City Code 41.10**

- Issue: Section 41.10(a)(6) requires one citizen representative from each of the council districts (plus various other citizen representative appointments). Adding a council district after the change to Class 2 will increase the number of representatives by one, but the code section specifically states that there are to be only 13 citizen representatives. After the change, we will have 14 citizen representatives. Therefore a change to the City Code would need to be made.

**WL Tree Friends (Formally Tree Fund Committee)**

- No change.

**Housing Maintenance Board of Appeals – WL City Code 112.03**

- Issue: Requires one at-large and one member from each council district. Will need to add a member after the change to six council districts.

**WL Human Relations Commission – WL City Code 24.04**

- No change.

**Park Board – IC 36-10-3-4; WL City Code 24.121**

- No change.

**Park Board Foundation**

- Per Joe Payne, this 501(c)(3) corporation should not change its member composition after the change to Class 2.

**WL Public Library Board of Trustees – IC 36-12-2-14**

- No change.

**Alcohol Beverage Commission – IC 7.1-2-4-7<sup>2</sup>**

- No change.

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<sup>2</sup> Composition: Two-Cities Exception. In a county in which there are located two (2) or more cities, each having a population of more than ten thousand (10,000), as to all applications for permits which apply to premises within the corporate limits of one (1) of the cities, the local board shall consist of the designated member, the appointed members appointed by the board of county commissioners and the county council, and a member appointed by the mayor of the effected city.

**Tippecanoe Area Plan Commission** (Based on discussion with APC Attorney Seeger)

- Indiana Code 36-7-4-211 provides that the membership of the APC is determined by an ordinance adopted by all member jurisdictions. In West Lafayette, this was Ordinance No. 22-95 on August 7, 1995, which is now codified in Chapter 24.22 of the City Code.
- Per Jay Seeger, upon West Lafayette becoming a second class city, it is being proposed that the APC expand from 15 members to 17 members, and that West Lafayette, like Lafayette, have 4 members (2 elected officials and 2 citizens) on the APC.
  - Lafayette has: 1 elected official appointed by mayor; 1 councilperson selected by the city council; and 2 citizen representatives appointed by the mayor.
  - West Lafayette currently has: 1 elected official appointed by the mayor and confirmed by the council; 1 citizen member appointed by the mayor.
- The proposal is to make Lafayette and WL the same.
  - WL will need to add 2 members: 1) a citizen member appointed by the mayor and 2) a councilperson appointed by the council.
  - WL will also need to modify code section (24.22)—as will rest of the UZO members.

**Tippecanoe Board of Zoning Appeals**

- No change per Jay Seeger.

**Greater Lafayette Transportation Corporation (City Bus) – WL City Code 24.42**

- No change.

**Police Merit Commission – IC 36-8-3.5-6**

- No change.

**Emergency Management Advisory Council – IC 10-14-3-17**

- No change.

**Go Greener Commission – WL City Code 24.172**

- No change.

**Historic Preservation Commission – IC 36-7-11-4; WL City Code 24.182**

- No change.